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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

2095.000900

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Signature

Typed or printed name

Nancy Nolan

Application Number

10/663,574

Filed

9/16/03

First Named Inventor

GABRIEL G. MARCU

Art Unit

3662

Examiner

LUKE D. RATCLIFFE

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒

attorney or agent of record. **50,737**
Registration number

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attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34

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5/22/07

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒

*Total of **1** forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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THE UNITED STATES PATENT AND TRADEMARK OFFICE

Pre Application of: Gabriel G. Marcu

Group Art Unit: 3662

Serial No.: 10/663,574

Examiner: LUKE D. RATCLIFFE

Filed: September 16, 2003

Conf. No.: 5291

For: Positioning A First Surface In A Pre-Determined Position Relative To A Second Surface

Atty. Dkt.: 2095.000900

Client Docket: P3112

REMARKS CONCERNING PRE-APPEAL BRIEF
REQUEST FOR REVIEW

MAIL STOP AF

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

Sir:

Applicant submits the following remarks concerning the Pre-Appeal Brief Request for Review and Notice of Appeal filed concurrently herewith.

The Examiner rejected claims 1-5, 8, 26 and 27 under 35 U.S.C. 102(b) as being anticipated by *Bachman* (US 4,764,010). The Examiner also rejected claims 10-13 and 18 under 35 U.S.C. 103(a) as being unpatentable over *Bachman* in view of *Holzl* (US 5,026,998). The Examiner further rejected claim 19 under 35 U.S.C. 103(a) as being unpatentable over *Bachman* in view of *Holzl*, as applied to claim 18, and further in view of *Stabile* (US 5,872,623). The Examiner additionally rejected claims 20, 21, 38-41, 44 and 45 under 35 U.S.C. 103(a) as being unpatentable over *Bachman* in view of *Holzl* and *Dankliker*. The Examiner further rejected claims 28-30 under 35 U.S.C. 103(a) as being unpatentable over *Bachman* in view of *Snyder* (US 4,480,912). The Examiner further rejected claim 36 under 35 U.S.C. 103(a) as being unpatentable over *Bachman* in view of *Stabile*. The Examiner further rejected claim 42 under

35 U.S.C. 103(a) as being unpatentable over *Bachman* in view of *Holzl* and *Dankliker* and *Snyder*. Finally, the Examiner rejected claim 43 under 35 U.S.C. 103(a) as being unpatentable over *Bachman* in view of *Holzl* and *Dankliker* and *Stabile*.

The Examiner imposed these rejections in the Final Office Action mailed January 4, 2007. The Examiner issued an Advisory Action on March 23, 2007, reiterating his statements in the Final Office Action. The Examiner's statements in the Final Office Action mailed January 4, 2007, represent clear errors.

Claim 1 calls for sending an optical signal from a first apparatus to a second apparatus based upon an incident angle. The method of claim 1 further includes receiving a reflection having a reflected angle of the optical signal from the second apparatus on a screen and adjusting a position of one of the apparatuses relative to the other apparatus by adjusting the incident angle based upon the reflection. Thus, this claim element calls for positioning a first device in relation to a second device. For example, the first device may be a measuring instrument or a test instrument that is aligned or positioned in relation to a second device, such as the LCD screen of a computer display and/or a television screen. The exemplary measuring instrument can be aligned more accurately with LCD screens. See Patent Application, page 7, lines 6-12. An optical source may be affixed to a test instrument wherein a light source (e.g., a laser) is pointed towards a subject, such as the LCD screen, which may contain a reflective material (e.g., a mirror) affixed upon its surface. The light is then reflected back to a screen that may be affixed to the test instrument or the optical source. However, these are exemplary embodiments, and as such, they are not meant to limit the scope of the claims.

The Examiner argues that the "first apparatus" of claim 1 corresponds to the first bracket of the four brackets 14a-d on a testing or processing machine in *Bachmann*, and the "second apparatus" corresponds to the second bracket of the four brackets 14a-d on the same testing or

processing machine disclosed in *Bachmann*. See Final Office Action, page 2. However, the Examiner is plainly incorrect at least with respect to the “second bracket” (i.e., second apparatus according to the Examiner). Even a cursory review of *Bachmann* reveals that the second bracket (“second apparatus” according to the Examiner) is, in fact, mounted on the same testing or processing machine on which the first bracket (i.e., first apparatus according to the Examiner) is mounted, and it is not a second apparatus, as called for by claim 1. See *Bachmann*, col. 2, lines 30-32 (stating a testing machine whose brackets with their axes are to be aligned relative to each other). For this reason alone, claim 1 (and its dependent claims) are allowable.

Bachmann discloses brackets being aligned using a laser. A laser is mounted on the first bracket and directs a beam onto the reflector surface of a disc mounted on the second bracket. The reflected beam produces a dot of light on the perforated disc, which is arranged near the exit aperture of the light source. The second bracket is adjusted, wherein the dot of light is directed onto the aperture and then the two brackets are regarded as being aligned. *Bachmann* cites that the beam emitted by the light source coincides exactly with the axis of the first bracket and the axis of the beam is aligned with the first bracket. See col. 2, lines 4-20 of *Bachmann*.

Bachmann does not disclose adjusting the position between the first and second devices based on the reflected light on the screen by adjusting the incident angle. In fact, *Bachmann* clearly does not disclose adjusting the incident angle at all. Therefore, clearly, *Bachmann* does not disclose adjusting the position of one of the apparatuses relative to the other by adjusting any type of an incident angle based upon a reflection. *Bachmann* does not disclose any type of a measurement or analysis of the incident angle at all. Therefore, for at least the arguments provided above claims 1, 26 and 27 of the present invention are not taught, disclosed or suggested by *Bachmann*. Therefore, claims 1, 26 and 27 of the present invention are allowable

for at least the reasons cited above. Further, dependent claims 2-5 and 8, which depend from allowable claim 1, are also allowable for at least the reasons cited above.

In the Advisory Office Action, the Examiner asserts that **Bachmann** shows sending an optical signal from a first apparatus to a second apparatus based upon an incident angle, incident being falling or striking something, as pertaining to light rays, any angle at which the optical signal from the first apparatus to the second apparatus would be incident. The Examiner alleges that **Bachmann** also shows using a screen that receives a reflected angle of the optical signal from the second apparatus. The Examiner further alleges that **Bachmann** also shows adjusting a position of one of the apparatuses relative to the other, IN ANY MANNER, by adjusting the incident angle, incident being falling or striking something, as pertaining to light rays, any angle at which the optical signal from the first apparatus to the second apparatus would be incident. The Examiner concludes that **Bachmann** thus shows each and every feature claimed in claim 1

In the cited passages, **Bachmann** describes a single testing machine whose brackets are aligned relative to each other. Rather than adjusting a position of one of the apparatuses relative to the other apparatus, as set forth in claim 1, **Bachmann** aligns different portions of a single apparatus by aligning their axes relative to each other. There is an argument that the second bracket in **Bachmann** (“second apparatus” according to the Examiner) mounted on the same testing or processing machine on which a first bracket (i.e., first apparatus according to the Examiner) is mounted, is not actually a second apparatus as called for by claim 1. Therefore, **Bachmann** does not teach or suggest adjusting a position of one of the two distinct apparatuses relative to the other apparatus in which an optical signal is sent from a first apparatus to a second apparatus, as set forth in independent claim 1. In other words, since **Bachmann** discloses aligning multiple brackets of a single apparatus with one another using their axes, **Bachmann**

does not anticipate or make obvious all of the elements of the claims. Other cited references do not make for this deficit.


With regard to claim 10 that calls for an optical source fixed to a first apparatus, wherein the optical source is capable of directing an incident light onto a second apparatus, the Examiner cites *Holzl* to make up for this deficit in *Bachmann*. However, *Holzl* merely discloses checking the coaxial alignment of tandem arranged shafts. *Holzl* is directed to measuring the inline or an offset state of the shaft and merely discloses proximate the first shaft 1, there is a measuring receiver 7 fixed in relation to the light source 5. See column 4, lines 19-22. *Holzl* does not describe a circuit that actually detects the position of the reflected light. Indeed, there is no disclosure of a circuit. Therefore, the combination of *Holzl* with *Bachmann* do not make up for the deficit of *Bachmann*.

In addition, other pending claims that stand rejected on a combination of *Bachmann* with other cited references are also allowable because *Bachmann* discloses aligning for a single apparatus with multiple brackets. Since *Bachmann* aligns, relative to each other, these brackets with their axes, it actually teaches away from the claimed combination. Thus, *Bachmann* undermines any motivation to combine its teachings with that of *other cited references*.

Therefore, Applicants submit all pending claims under consideration, *i.e.*, claims 1-8, 10-13, 18-23, 26-30, and 35-45, are in condition for allowance.

Respectfully submitted,
WILLIAMS, MORGAN & AMERSON, P.C.

Date: May 21, 2007



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